

BILL ANALYSIS

Senate Research Center

S.B. 1227
By: Henderson
Jurisprudence
6-24-93
Enrolled

BACKGROUND

Currently, in Houston, persons involved in motor vehicle accidents are being solicited to use the services of lawyers by wrecker drivers, law enforcement officers, ambulance and EMS personnel, and medical personnel. Additionally, those persons involved in the accident are solicited by phone by attorneys who received information through accident reports. Statistics suggest that up to 80 percent of all accident victims, and 100 percent of "obvious fault" accident victims are contacted whether or not injuries occur.

PURPOSE

As enrolled, S.B. 1227 makes provisions and provides penalties for the offenses of barratry, falsely holding oneself out to be a lawyer, and the unauthorized practice of law.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is granted to the State Bar of Texas under SECTION 7(a) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 38.01, Penal Code, to amend the definition of "economic benefit," delete a definition of "hospital," and define "finance," "invest funds," "public media," and "solicit employment."

SECTION 2. Amends Section 38.12, Penal Code, as follows:

Sec. 38.12. BARRATRY. (a) Provides that a person commits an offense if, with intent to obtain economic benefit, the person knowingly:

- (1) institutes a suit or claim that the person has not been authorized to pursue;
- (2) solicits employment, in person or by telephone for himself or herself, or another;
- (3) pays, gives, or advances or offers to pay, give, or advance to a prospective client money or anything of value to obtain legal representation from the prospective client;
- (4) pays or gives or offers to pay or give a person money or anything of value to solicit employment;
- (5) pays or gives or offers to pay or give a family member of a prospective client money or anything of value to solicit employment; or
- (6) accepts or agrees to accept money or anything of value to solicit employment.

(b) Provides that a person commits an offense if the person is a licensed attorney, chiropractor, physician, surgeon, or private investigator or any person licensed, certified, or registered by a health care regulatory agency of this state and knowingly finances or invests funds the person knows or believes are intended to further the commission of an offense, or accepts employment within the scope of the person's

license, registration, or certification that results from the solicitation of employment in violation of Subsection (a).

(c) Provides that it is an exception to prosecution under Subsection (a) that the person's conduct is authorized by the Texas Disciplinary Rules of Professional Conduct or any rule of court.

(d) Provides that a person commits an offense if the person is a licensed attorney, chiropractor, physician, surgeon, or private investigator or any person licensed, certified, or registered by a health care regulatory agency of this state, and with the intent to obtain professional employment for himself or herself or for another, sends or knowingly permits to be sent to an individual who has not sought the person's employment, legal representation, advice, or care a written communication that contains specific information.

(e) Provides that for the purposes of Subsection (d)(2)(E), a desire not to be contacted is presumed if an accident report reflects that such an indication has been made by an injured person or that person's relative.

(f) Provides that an offense under Subsection (a) or (b) is a third degree felony.

(g) Provides that except as provided by Subsection (h), an offense under Subsection (d) is a Class A misdemeanor.

(h) Provides that an offense under Subsection (d) is a third degree felony if it is shown on the trial of the offense that the defendant has previously been convicted under Subsection (d).

(i) Makes conforming and nonsubstantive changes.

SECTION 3. Amends Section 45(a), Article 6701d, V.T.C.S. (Uniform Act Regulating Traffic on Highways), to require accident request forms to include a means of designating whether an individual involved in an accident does or does not desire to be contacted by persons seeking to obtain professional employment as a professional described by Section 38.12(b)(1), Penal Code. Provides that an individual's response as to whether the individual desires to be contacted is not admissible as evidence in a civil trial.

SECTION 4. Amends Chapter 415C, Government Code, by adding Section 415.0581, as follows:

Sec. 415.0581. CONVICTION OF BARRATRY. (a) Provides that a person who has been convicted of barratry is disqualified to be an officer or county jailer. Prohibits the Commission on Law Enforcement Standards and Education (commission) from licensing such a person and requires the commission on conviction to immediately revoke the license of a person previously licensed.

(b) Provides that a person is convicted of barratry if a court of competent jurisdiction enters an adjudication of guilt against the person regardless of certain circumstances.

SECTION 5. Amends Chapter 38, Penal Code, by adding Sections 38.122 and 38.123, as follows:

Sec. 38.122. FALSELY HOLDING ONESELF OUT AS A LAWYER. Provides that a person commits an offense if, with the intent to obtain an economic benefit for himself, the person holds himself out as a lawyer, unless he is currently licensed to practice law in this state, another state, or a foreign country and is in good standing with the State Bar of Texas and the state bar or licensing authority of any and all other states and foreign countries where licensed.

(b) Provides that an offense under Subsection (a) is a third degree felony.

(c) Provides that final conviction of falsely holding oneself out to be a lawyer is a serious crime for all purposes and acts, specifically including the State Bar Rules.

Sec. 38.123. UNAUTHORIZED PRACTICE OF LAW. (a) Provides that a person commits an offense if, with the intent to obtain economic benefit for himself or herself, the person takes certain actions.

(b) Provides that this section does not apply to a person currently licensed to practice law in this state, another state, or a foreign country, and in good standing with the State Bar of Texas and state bar or licensing authority of any and all other states and foreign countries where licensed.

(c) Provides that except as provided by Subsection (e), an offense under Subsection (a) is a Class A misdemeanor.

(d) Provides that an offense under Subsection (a) is a third degree felony if it is shown on the trial of the offense that the defendant has previously been convicted under Subsection (a).

SECTION 6. Amends Section 215.034, Local Government Code, to make conforming changes.

SECTION 7. (a) Requires the State Bar of Texas to adopt rules governing lawyer advertising and written solicitations to prospective clients not later than June 1, 1994.

(b) Prohibits a rule adopted under this section from conflicting with any other law.

SECTION 8. Provides that if enacted, S.B. 1067, 73rd Legislature, Regular Session, 1993, does not affect Sections 38.122 and 38.123, Penal Code, as added by this Act, and those sections continue in effect on and after the enactment and effective date of S.B. 1067 as a part, and subject to the general provisions, of the Penal Code, as amended.

SECTION 9. Makes application of this Act prospective.

SECTION 10. Effective date: September 1, 1993.

SECTION 11. Emergency clause.